

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

FRED MEYER STORES, INC.

and

Case 19-CA-32311

UNITED FOOD AND COMMERCIAL
WORKERS LOCAL 367, affiliated
with UNITED FOOD AND COMMERCIAL
WORKERS INTERNATIONAL UNION

ORDER

On May 7, 2010, the Board issued a Decision and Order in this proceeding, which is reported at 355 NLRB No. 30.¹ Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the District of Columbia, and the General Counsel filed a cross-application for enforcement. Thereafter the court ordered that the review proceedings be held in abeyance, and the record in this case was not filed with the court.

¹ On June 11, 2009, the two sitting members of the Board issued an Order denying the Respondent's request for review in Case 19-RC-15194. Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases.

On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained.

Accordingly, in view of the court's decision in *New Process Steel, L.P.*, pursuant to Section 10(d) of the National Labor Relations Act, the Board hereby sets aside the above-referenced Decision and Order.² The Board will retain this case on its docket and take further action as appropriate.

By Direction of the Board:

Lester A. Heltzer
Executive Secretary

² Section 10(d) states "[u]ntil the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it." See also *In re NLRB*, 304 U.S. 486 (1938).